

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

State of Illinois, Illinois Department of Transportation,
Petitioner,

v.

Burlington Northern & Santa Fe Railway Company & Chalmers
Township,
Respondents.

Petition for an Order granting permission to relocate an at-grade
crossing which traverses BNSF's tracks west of Macomb,
McDonough County.

T03-0074

ORDER

By the Commission:

On August 5, 2003, the Illinois Department of Transportation ("Department") filed the above captioned petition with the Illinois Commerce Commission ("Commission") naming The Burlington Northern and Santa Fe Railway Company ("Railroad") and Chalmers Township, McDonough County as Respondents.

On February 4, 2004, the Department filed and was granted a Motion for leave to amend its original Petition. The Department proposes in conjunction with relocating the TR-226 at-grade crossing to install automatic flashing light signals and gates controlled by constant warning time circuitry.

Pursuant to notice as required by law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission on October 16, 2003 and April 1, 2004, at the Commission's offices in Springfield, Illinois. Department entered its appearance through its representative and Counsel represented the Railroad. A member of the Commission's Railroad Section ("Staff") also entered an appearance. At the conclusion of the hearing on April 1, 2004, the case was marked "Heard and Taken."

The Petition alleges that Department desires to realign US 136 (FAP Route 315). Approximately two (2) miles west of Macomb, TR-226 is a public street under the jurisdiction of Chalmers Township, which traverses the Railroads tracks at grade (**AAR/DOT 079 593S, Milepost 206.36**). Approximately .14 miles north of the TR-226 at-grade crossing, TR-226

intersects with US 136. Due to the Department's desire to improve US 136 it has developed plans to improve US 136 in the vicinity of TR-226, which will include realigning TR-226 near its intersection with US 136. The realignment of TR-226 will require the at-grade crossing be relocated approximately 235 feet west of its current location. The Department has developed plans to construct the new at-grade crossing, as well as remove the existing at-grade crossing. The Department accepts financial responsibility for both construction of the new TR-226 at-grade crossing and removal of the existing TR-226 at-grade crossing. Chalmers Township will assume the maintenance responsibility for the relocated TR-226 approaches through separate agreement with the Department. The Department proposes to install automatic flashing light signals and gates controlled by Constant warning time circuitry all at its expense. The Railroad will be responsible for maintaining the relocated at-grade crossing surface and warning devices. To that end the Department has executed two agreements with the Railroad that covers the relocation of the at-grade crossing and installation of the automatic warning devices, a division of cost for the proposed work and future maintenance of the crossing surface and warning devices. Copies of the agreements were entered into evidence as Petitioner Exhibits 1 and 2. The Department requests eighteen (18) months within which to complete the required work.

Staff recommended the Petition be granted as requested.

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the subject matter and the parties;
- (2) the recitals of fact set forth in the prefatory portion of this order are supported by the evidence of record and are hereby adopted as findings of fact;
- (3) Department proposes to improve US 136 (FAP Route 315) and TR-226 west of Macomb; TR-226 is under the jurisdiction of Chalmers Township; the existing at-grade crossing (**AAR/DOT 079 593S, Milepost 206.36**) will be relocated and realigned approximately 235 feet west of its current location;
- (4) the proposed roadway relocation and realignment of TR-226 is necessary to preserve the safety of the public and for public convenience and necessity;
- (5) Department proposes to fund the proposed relocation and realignment costs incurred by the Railroad for the new crossing surface, installation of automatic warning devices and removal of

the existing crossing surface and crossbucks once the relocated roadway is opened to traffic;

- (6) Department proposes that Chalmers Township, McDonough County assume responsibility for maintenance of the new realigned highway approaches;
- (7) Department proposes that the Railroad be responsible for maintaining the new crossing surface and automatic warning devices;
- (8) Chapter 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Commission that permission and authority be, and they are hereby, granted to the Department to realign and relocate the TR-226 at-grade crossing of the Railroad all as depicted in the Departments Agreements entered into evidence as Exhibits 1 and 2.

IT IS FURTHER ORDERED that the Railroad shall install and thereafter operate and maintain the new crossing surface and automatic warning devices as outlines in the Departments agreement entered into evidence as Exhibits 1 and 2.

IT IS FURTHER ORDERED that Chalmers Township Road District shall be responsible for the new highway approaches, and all other highway facilities;

IT IS FURTHER ORDERED that the Department shall, at six month intervals from the date of this order, file with the Director of Processing, Transportation Division, Illinois Commerce Commission, written progress reports for the project herein authorized.

IT IS FURTHER ORDERED that the work herein required shall be completed within eighteen (18) months of the date of this Order.

IT IS FURTHER ORDERED that, within five (5) days after the completion of the work herein authorized, Department shall provide written notice thereof to said Director of Processing.

IT IS FURTHER ORDERED that any person making a Request For Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the schedule deadline. An Administrative law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

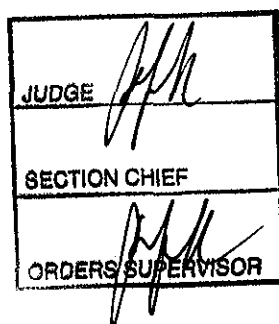
IT IS FURTHER ORDERED that Requests for Extensions of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Department and Railroad shall comply with the clearance requirements of 92 Ill. Adm. Code 1500.

IT IS FURTHER ORDERED that in accordance with 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 5th day of May, 2004.



*Edward C. Hurley*₂

Chairman